

## **Wage and Hour Division, Labor**

## **§ 501.33**

Hour Division for the purpose of enforcing the contractual obligations. These sections indicate the actions which may be taken upon failure to permit or interference with an investigation. No person shall interfere with any employee of the Secretary who is exercising or attempting to exercise this investigative or enforcement authority. As stated in §§ 501.5, 501.6 and in 501.19 of this part, a civil money penalty may be assessed for each failure to permit an investigation or interference therewith, and other appropriate relief may be sought. In addition Wage and Hour shall report each such occurrence to ETA and may recommend to ETA denial of future labor certifications. The taking of any one action shall not bar the taking of any additional action.

### **§ 501.21 Referral of findings to ETA.**

Where Wage-Hour finds violations Wage and Hour shall so notify the appropriate representative of ETA and shall forward appropriate information, including investigative information to such representative for review and consideration.

### **§ 501.22 Civil money penalties—payment and collection.**

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

## **Subpart C—Administrative Proceedings**

### **§ 501.30 Applicability of procedures and rules.**

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to impose an

assessment of civil money penalties and which may be applied to the enforcement of contractual obligations, including the collection of unpaid wages due as a result of any violation of the H-2A provisions of the Act or of these regulations. Except with respect to the imposition of civil money penalties, the Secretary may, in his discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

## **PROCEDURES RELATING TO HEARING**

### **§ 501.31 Written notice of determination required.**

Whenever the Administrator determines to assess a civil money penalty or to proceed administratively to enforce contractual obligations, including the recovery of unpaid wages, the person against whom such action is taken shall be notified in writing of such determination.

### **§ 501.32 Contents of notice.**

The notice required by § 501.31 shall:

(a) Set forth the determination of the Administrator including the amount of any unpaid wages due or contractual obligations required and the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 501.33.

### **§ 501.33 Request for hearing.**

(a) Any person desiring to request an administrative hearing on a determination referred to in § 501.32 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after issuance of the notice referred to in § 501.32.

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(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the Administrator at the above address, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail.

### **RULES OF PRACTICE**

#### **§ 501.34 General.**

Except as specifically provided in these regulations, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

#### **§ 501.35 Commencement of proceeding.**

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

#### **§ 501.36 Caption of proceeding.**

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of \_\_\_\_, Respondent.

(b) For the purposes of such administrative proceedings the Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

## **29 CFR Ch. V (7-1-03 Edition)**

### **REFERRAL FOR HEARING**

#### **§ 501.37 Referral to Administrative Law Judge.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33 the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under these regulations or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

#### **§ 501.38 Notice of docketing.**

Upon receipt of an Order of Reference, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

#### **§ 501.39 Service upon attorneys for the Department of Labor—number of copies.**

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the Department of Labor. One copy shall